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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,965	01/03/2001	Clark Debs Jeffries	RAL920000100US1	1702

47052 7590 05/03/2005

SAWYER LAW GROUP LLP
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EXAMINER

KADING, JOSHUA A

ART UNIT PAPER NUMBER

2661

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/753,965

Applicant(s)

JEFFRIES ET AL.

Examiner

Joshua Kading

Art Unit

2661

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

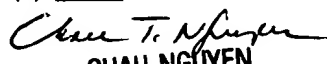
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


CHAU NGUYEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 11. does NOT place the application in condition for allowance because: applicant's arguments have been considered but are not persuasive.

Firstly, on 12 April 2005 Ms. Janyce R. Mitchell indicated that there were indeed no amended claims to be entered as requested in the applicant's REMARKS/ARGUMENTS, page 2, filed on 6 April 2005.

Applicant asserts that because Bertin discloses an "average bandwidth" this cannot possibly be an equivalent to applicant's "minimum guaranteed bandwidth" because the "average bandwidth" is assumed, by applicant, to be based on "traffic actually delivered by the user." This is different from the "minimum guaranteed bandwidth" because the "minimum guaranteed bandwidth as defined in the present application is a minimum that must be guaranteed regardless of the traffic density actually delivered by the customer." The examiner respectfully disagrees with applicant's assertion that Bertin does not read on the claimed invention.

It is noted that although Bertin does not disclose verbatim a "minimum guaranteed bandwidth," the passage of Bertin cited in the rejection (col. 10, lines 8-40) indicates the functional equivalent to a "minimum guaranteed bandwidth" through the disclosure of the "average bandwidth requested by the user." Applicant states in the REMARKS, page 6, lines 1-2 that the "minimum guaranteed bandwidth as defined in the present application is a minimum that must be guaranteed regardless of the traffic density actually delivered by the customer." That is to say, the minimum guaranteed bandwidth is a minimum bandwidth required throughout the connection. This is exactly what Bertin's "average bandwidth" is. Bertin, col. 10, lines 38-40 state, "[t]he bandwidth reservation falls somewhere between the average bandwidth required by the user and the maximum capacity of the connection." Thus, the "average bandwidth," as it is used in Bertin, is a lower bound on the bandwidth required for the connection, i.e. it is a minimum guaranteed bandwidth.

Further, applicant takes issue with how the "average bandwidth" may be calculated in Bertin and how this differs from the claimed "guaranteed minimum bandwidth." There is nothing in the claimed invention about how the "guaranteed minimum bandwidth" is calculated/determined. Because Bertin goes one step further in implying how the required minimum bandwidth is calculated through the use of the term "average," this does not preclude it from reading on applicant's invention. In fact, the "average bandwidth required by the user" falls well within the bounds of applicant's invention because of its more narrowly implied definition. Further, applicant's own specification states on page 2, lines 11-12, "[t]he bandwidth of a flow is the rate of the flow (generally somehow averaged over time)..." Therefore, it is not clear how applicant can assert that Bertin's "averaged bandwidth" cannot read on applicant's claimed invention when applicant defines bandwidth as an average.

Lastly, it also seems that applicant is suggesting that because the bandwidth of Bertin is an average it is constantly changing (REMARKS, page 6, last 2 lines) and therefore different from applicant's claimed fixed "minimum guaranteed bandwidth." There is nothing in Bertin to suggest that the "average bandwidth required by the user" is constantly changing. The term "average bandwidth" in Bertin (as well as applicant's own specification) does not mean changing, it is directed to the origin or calculation of the minimum user required bandwidth and therefore reads on applicant's "minimum guaranteed bandwidth."